APPEAL NO. 040128
FILED MARCH 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing (CCH) was held on November 20, 2003. In (Docket No. 1), the hearing officer determined that the compensable injury sustained by the appellant (claimant) on (date of injury for Docket No. 1), does not extend to and include the left shoulder, left elbow, fibromyalgia, thoracic outlet syndrome, and pronator tunnel syndrome. The claimant appealed the extent-of-injury determination on sufficiency of the evidence grounds. The respondent (self-insured) responded, contending that it was clear from the evidence presented at the CCH that the claimant failed to meet her burden of proof on the extent-of-injury issue. In (Docket No. 2), the hearing officer determined that: (1) the claimant did not sustain a compensable injury in the form of an occupational disease; (2) that the self-insured is not relieved of liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001; (3) the date of injury is (date of injury for Docket No. 2); (4) that the left shoulder, left elbow, fibromyalgia, thoracic outlet syndrome, and pronator tunnel syndrome are not results of a compensable occupational disease; and (5) that the self-insured did not waive its right to dispute timeliness of reporting in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 124.2 and 124.3 (Rules 124.2 and 124.3). The claimant appealed, disputing the determinations that she did not sustain an injury in the form of an occupational disease and that the left shoulder, left elbow, fibromyalgia, thoracic outlet syndrome, and pronator tunnel syndrome are not results of a compensable occupational disease. The self-insured responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

In both Docket No. 1 and Docket No. 2, the hearing officer found that the claimant continued to perform her regular duties as an administrative assistant from (date of injury for Docket No. 1), through the end of April 2003. The claimant appeals these findings, arguing that she never had the title of administrative assistant. We find no error in these findings because a review of the record reflects that the claimant testified that she performed the duties of an administrative assistant during the time period found by the hearing officer. Additionally, the claimant contends in both Docket No. 1 and Docket No. 2 that the hearing officer took too long to write the decision and order. Rule 142.16(c) provides that the hearing officer shall file all decisions with the Texas Workers' Compensation Commission Division of Hearings not later than the 10th day after the close of the hearing. The Appeals Panel early on addressed that situation in Texas Workers' Compensation Commission Appeal No. 92456, decided October 8, 1992, citing the Texas Supreme Court case of Lewis v. Jacksonville Building and Loan Association, 540 S.W.2d 307 (Tex. 1976), which held that the hearing officer's time

limits do not go to the essence of the merits and thus are not mandatory. We hold the claimant's appeal on this ground to be without merit.

The extent-of-injury issue in Docket No. 1 presented a question of fact for the hearing officer to resolve. The hearing officer was not persuaded that the claimant satisfied her burden to show that the claimed conditions were the direct and natural results of the compensable injury of (date of injury for Docket No. 1). The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the disability determination on appeal. Cain, *supra*.

In Docket No. 2, whether or not the claimant sustained a compensable injury in the form of an occupational disease and whether the claimed conditions were a result of a compensable occupational disease also presented questions of fact for the hearing officer to resolve. The hearing officer noted that the evidence reflected that her duties were varied and were neither repetitive nor traumatic. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). We conclude that the hearing officer's injury determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

OFFICE OF THE CITY CLERK
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Margaret L. Turner
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Robert W. Potts
Appeals Judge